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institutions, the conflict is not necessarily great, as Mr. Stevens aims to show a clear English influence only in specific lines, and is limited by the scope of his work from entering into a discussion of other lines of racial influence, in the details of some of which the supporters of the Dutch claims have found much satisfaction. Although written before the publication of *The Puritan in Holland, England and America*, the present work has been supplemented by copious foot-notes which in many cases present an apparently conclusive refutation of Mr. Campbell's arguments. In all discussions upon such uncertain quantities as collective instinct, results are often as unsatisfactory as opinions are positive; and it is well that this new volume has such an aim as to render necessary no great unburdening of personal opinion, but only such expressions and effort as tend to constitute a clearly stated exposition of evolutions in the history of government.

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Commentaries on the Law of Public Corporations. By CHARLES FISK BEACH, Jr. Indianapolis, Bowen-Merrill Co., 1893. — Two volumes, cclxiii, xxiv, 1692 pp.

A Treatise on the Negligence of Municipal Corporations. By DWIGHT ARVEN JONES. New York, Baker Voorhis & Co., 1892. — lxviii, 588 pp.

The law relative to municipal corporations has been very successfully treated in the work of Judge Dillon, which work has probably attained a greater, and justly a greater, popularity than any other legal treatise which has been placed before the public by an American writer. Any one, then, who attempts to treat of this subject at the present time, has before him a high standard of excellence. Moreover, Judge Dillon has found time, notwithstanding his large practice, to keep his work up to date by the issue of successive new editions. An attempt by any other author to treat the same subject must find justification either in the assumption of a somewhat different point of view, or in an endeavor to compare the law of municipal corporations proper with that of *quasi* municipal corporations, or in an especially full elaboration of some particular branches of the law whose principles cannot yet be regarded as firmly settled.

It is the second of these ends which Mr. Beach seems to have had in view. His work on the law of public corporations he himself regards as an attempt, in connection with his former work on the *Law of Private Corporations*, to give to the reader a complete commentary on "company law." The present work, therefore, embraces a somewhat larger field than that which Judge Dillon attempted to cover. It covers the entire field of the law of public corporations. Indeed, its particular excellence must be found in this fact. Yet the attempt to treat at the same time of two portions of the law which have so many differences in minor details as the law of municipal corporations proper and that of *quasi* municipal corporations, is apt to lead to a certain amount of confusion. This confusion is not altogether avoided by Mr. Beach. He does not in all cases lay sufficient emphasis upon the differences between the two bodies of law. At the same time, when we consider the high standard by which Mr. Beach's work is to be judged, it must be confessed that he has acquitted himself creditably of his task. The law is stated in general with accuracy, and the newer decisions upon the subject are all collected and set forth. If any fault in the work is particularly prominent, it is the failure to adopt an altogether scientific classification. Thus we find that the same subject is often treated in different parts of the work,—a fault which, while it does not perhaps detract so much from the value of the work in the hands of the practicing lawyer, who may pursue a topic by means of the index, does certainly detract considerably from its value to one who desires to study the law of municipal corporations or of public corporations as a whole.

Mr. Beach has, however, in some parts, especially in the second volume, adopted an excellent classification,—a classification which we do not find in the ordinary legal treatise. Thus, he has attempted to take up in special chapters the different branches of administration which are attended to by municipal and public corporations and has practically produced the most nearly complete treatise that we have on American administrative law. Thus, we find chapters on the "Administration of Charities and Correction," the "Administration of Public Health," the "Administration of Schools," the "Administration of Police," and on the "Administration of Justice," so far as that is a part of the work of municipalities. Also, we find chapters on "Water and Light," and naturally on "Taxation and Local Assessments."

One feature of Mr. Beach's work that is common to almost all

American legal treatises, is the lack of any adequate historical treatment of the subject. While the practicing lawyer has no need, as a general thing, to delve into historical documents in order to be able properly to try a case which he may have before him, still it is positively necessary for the intelligent study of municipal legal questions, that they be considered in the light of their history. No one can understand the present position of the American municipal corporation before the law unless he has made a study of the original legal position of the English municipal corporation. The relation of the present American municipal corporation to the state legislature, which is becoming a most important political question, can be comprehended only by knowing that the original English municipal corporation was not an organization for the purposes of general government, but was merely a corporation for the satisfaction of local needs. None of the cases that come up with regard to the control of the legislature over municipal corporations can be decided satisfactorily, save through an understanding of this principle. With the development of the more public side of the municipal corporation, as an agent of central government, the necessity of some central control over it has become apparent. But it should always be borne in mind that the municipal corporation was originally more an organ for the satisfaction of purely local needs, as it is at the present time in England. The ignoring of this fact by the legislatures of the country, and the lack of a proper historical study of municipal corporations on the part of legal writers, have resulted in the claim of the legislatures at the present time, in which they find large support from the courts, to control all matters with regard to municipal government, whether these matters be of local or of general concern. This lack of proper historical study of the subject has the further disadvantage of making most of the treatises on the law of municipal corporations which have been written by lawyers of much less value to the student of municipal government than they otherwise would be. For these works are practically limited in their scope to those matters wherein the rights of individuals are concerned — naturally the matters in which there is the greatest litigation. It is to be hoped that some writer on the law of municipal corporations will be found who will unite the qualifications of the lawyer with those of the political scientist, so far, at any rate, as municipal government is a part of political science.

While Mr. Beach has attempted to treat the law not only of municipal but of all public corporations, Mr. Jones, in his work on the

Negligence of Municipal Corporations, has confined himself, as the title of his book implies, to one of the details in the law of municipal corporations proper. His work, however, is not on that account unimportant, for there has been no subject in the law of municipal corporations which has given rise to more conflict in the American decisions than this same subject of their negligence. Here again the twofold position of municipal corporations— as organizations for the satisfaction of local needs and as agents of the central government for carrying on those branches of administration that affect the state as a whole— has been of immense influence and importance. Mr. Jones recognizes this fact and lays great emphasis on it in his classification of the subject. He not only classifies the duties of municipal corporations, in connection with which negligence may cause damage to individuals, as public duties on the one hand, and private duties on the other; but he has adopted a third head in his classification, namely, “municipal duties relating to governmental affairs,” under which he includes the matter of neglect for highways and kindred matters. While no one will claim that this is an altogether satisfactory classification from the standpoint of pure scientific theory, it must be admitted that in the present state of the law in the United States as to the liability of municipal corporations for neglect of their duties relative to highways and the like, no classification could be adopted which could be more satisfactory. For the rule of law with regard to the liability of these bodies in this respect must be regarded as an exception to the generally accepted rules as to their non-liability for purely governmental matters. Neither the legislatures nor the courts recognize that streets or highways are, in any sense, local in character in any other branch of the law.

Mr. Jones has put the legal profession under a great obligation for the satisfactory manner in which he treats this most vexed subject of municipal negligence. Besides presenting an acute analysis of the law of negligence in general, and an interesting historical description of its application to municipal corporations, he has made a distinct contribution to legal science in pointing out that in the later decisions upon the subject of negligence the courts are departing from the great canon of distinction between public, or governmental, and local, or municipal, duties so far as municipal corporations are the owners or managers of property. He shows that in the latest decisions, even if such property is used for governmental or public purposes, the municipal corporation to which it belongs is being held

more strictly to responsibility for negligence in its care and management. This is undoubtedly one of the directions in which we may expect to see great development in the future; for nothing can shock one's sense of justice more than the decisions which, up to the present time, have been so common, holding that, simply because a piece of property, owned by a municipal corporation and negligently managed by it to the damage of an individual, is used for purposes of general rather than of local government, therefore, the municipal corporation which is guilty of the negligence shall be exempted from all liability to the individual for the damages which it has caused.

Mr. Jones also has much to say with regard to the rule which exempts municipal corporations from liability for negligence in the performance of acts which are *ultra vires*. He considers, as most people consider, that such a rule is unjust, and is indeed nothing but an application of the old idea, which has long since been discarded, that corporations could not be held liable for torts, inasmuch as they in no circumstances are authorized to commit torts and that therefore, the act of the agent by whom the tort was committed is not the act of the corporation. Mr. Jones lays great stress upon a case in the United States Supreme Court, *viz.*, Salt Lake City *vs.* Hollister (118 U. S., 256). In this case the city was held responsible for the payment of internal revenue taxes incurred by carrying on the business of distilling spirits, although the prosecution of the business was wholly *ultra vires*. In Mr. Jones's opinion the basis of this decision was the broad ground that corporations could not escape from liability for wrongful acts by showing that these acts were *ultra vires*, and he believes that Justice Miller, who rendered the opinion in the case, meant to give a deliberate expression of the view of the court upon the general question of *ultra vires*. It is to be hoped with Mr. Jones, that the decision to which he refers may be given a wider application in the future than it has yet received.

Mr. Jones's style is excellent, and the whole arrangement of the work is so clear that it is a positive pleasure to read it. Higher praise could hardly be given to any legal treatise; for in general such works consist so much of citations from decisions that to any but a lawyer who is endeavoring to write a brief, the perusal of them is altogether wearisome.

F. J. GOODNOW.